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In re Application of :  
Singhal et al. :  
Application Number: 10/730878 : ON PETITION  
Filing Date: 12/09/2003 :  
Attorney Docket Number: 1023- :  
334US01 :

This is a decision on the petition under 37 CFR 1.181 requesting withdrawal of the holding of abandonment, filed on August 20, 2008.

The petition is GRANTED.

The application was held abandoned for failure to timely a reply to the non-final Office action mailed on January 17, 2008, which set a three (3) month shortened statutory period for reply. The filing of the subject petition precedes the mailing of Notice of Abandonment.

Petitioners assert that a timely response, including an amendment, was filed by facsimile on April 11, 2008.

In support, petitioners have provided a copy of the amendment and extension of time asserted to have been timely filed. Additionally, a copy of the sending unit's transmission report and the USPTO Auto-Reply Facsimile Transmission report, showing that 17 pages, including the cover page of the reply, were filed on April 11, 2008. Petitioners have also provided a copy of the transmittal page, containing a certificate of transmission signed by Patricia Cygan and dated April 11, 2008, as well as a statement, signed by Ms. Cygan, stating that the amendment was transmitted by facsimile to the USPTO on April 11, 2008.

37 CFR 1.8(b) states:

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and

(3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

As petitioners have provided convincing evidence that a response to the non-final Office action mailed on January 17, 2008, was transmitted to the USPTO on April 11, 2008, the showing of record is that a response was timely filed, and there is no abandonment in fact. Any inconvenience caused to applicant is regretted.

The holding of abandonment is withdrawn, and the notice of abandonment is vacated.

The application is referred to Technology Center Art Unit 3762 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.



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